

Fiscal Estimate - 2009 Session

☒ Original
 ☐ Updated
 ☐ Corrected
 ☐ Supplemental

LRB Number 09-2859/1	Introduction Number AB-0283
Description Operating a vehicle while intoxicated, granting rule-making authority, making an appropriation, and providing a penalty	
Fiscal Effect State: <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input checked="" type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations </div> <div style="width: 33%;"> <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues </div> <div style="width: 33%;"> <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <div style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> <input type="checkbox"/> Decrease Costs </div> </div> Local: <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate <div style="margin-top: 10px;"> 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> <div style="margin-top: 10px;"> 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> </div> <div style="width: 33%;"> <div style="margin-top: 10px;"> 3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> <div style="margin-top: 10px;"> 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> </div> <div style="width: 33%;"> 5. Types of Local Government Units Affected <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> Towns <input type="checkbox"/> Counties <input type="checkbox"/> School Districts </div> <div style="width: 33%;"> <input type="checkbox"/> Village <input type="checkbox"/> Others <input type="checkbox"/> WTCS Districts </div> <div style="width: 33%;"> <input type="checkbox"/> Cities </div> </div> </div> </div>	
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Agency/Prepared By DA/ Phil Werner (608) 267-2700	Authorized Signature Tom Herman (608) 266-0239
Date 6/2/2009	

Fiscal Estimate Narratives

DA 6/2/2009

LRB Number	09-2859/1	Introduction Number	AB-0283	Estimate Type	Original
Description Operating a vehicle while intoxicated, granting rule-making authority, making an appropriation, and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

A major impact of this law is that fourth offense OWI would become a felony. This will lead to an increase in the number of motion hearings, trials, and appeals.

In 2007 there were 1,902 fourth offense OWI cases.

1,902 cases x 6.32 hours (dif. between felony and misdemeanor) = 12,020 hours

12,020 hours divided by 1,227 = 9.80 ADAs needed.

The impact of this law change could require 9.8 ADAs

Annual salary = \$47,036

Annual fringe = \$18,433

TOTAL = \$65,469 x 9.8 ADAs = \$641,596.

The figures above are based on those used in the DA workload analysis. Prosecutors believe that this bill would require more prosecutors than the figures above indicate, due to increased motion hearings and case filings associated with the bill.

Counties would face increases in jail costs.

Long-Range Fiscal Implications

For a long-range fiscal impact, please see above.

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Agency/Prepared By DA/ Phil Werner (608) 267-2700	Authorized Signature Tom Herman (608) 266-0239
Date 6/15/2009	

Fiscal Estimate Narratives

DA 6/15/2009

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Assumptions Used in Arriving at Fiscal Estimate

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12,020 hours divided by 1,227 = 9.80 ADAs needed.

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Annual salary = \$47,036
Annual fringe = \$18,433
TOTAL = \$65,469 x 9.8 ADAs = \$641,596.

The figures above are based on those used in the DA workload analysis. Prosecutors believe that this bill would require more prosecutors than the figures above indicate, due to increased motion hearings and case filings associated with the bill.

Counties would face increases in jail costs.

Subsequent to submittal of the initial fiscal estimate, additional input was received from prosecutors. Most whom responded indicated that this bill would have a significant effect on DA offices, particularly due to the increase in the minimum penalties required by this bill. Major concerns include additional probation review hearings, jury trials, motion hearings, etc. As a result of increased minimum sentences, many defendants will call for a trial because their ability to plea would be taken away.

Additional ADAs would be needed because of provisions of the bill such as requiring at least two years in prison for 4th, 5th, or 6th OWI-related offenses, requiring at least three years in prison for 7th, 8th, or 9th OWI-related offenses, and a minimum of four years in prison for a 10th OWI-related offense.

In addition, 2nd or subsequent OWI-related offenses that cause injury to another person would be subject to imprisonment for not more than six years. Such offenses would likely go to trial.

While it is difficult to quantify this information due to a lack of data, many prosecutors estimated that they would need an increase in ADAs of approximately 20% of their current staff. 20% of the approximately 435 prosecutors would mean a need of 87 additional prosecutors. Using a more conservative number of 10% of staff would indicate a need of 43.5 prosecutors.

Using the conservative estimate of a need for 43.5 ADAs, the additional cost would be:
Annual salary = \$47,036
Annual fringe = \$18,433
TOTAL = \$65,469 x 43.5 ADAs = \$2,847,902.

The figures above are based on those used in the DA workload analysis.

Long-Range Fiscal Implications

For a long-range fiscal impact, please see above.

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Agency/Prepared By DOC/ Lucie Widzinski-Pollock (608) 240-5416	Authorized Signature Robert Margolies (608) 240-5056	Date 6/10/2009

Fiscal Estimate Narratives

DOC 6/10/2009

LRB Number	09-2859/1	Introduction Number	AB-0283	Estimate Type	Original
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Assumptions Used in Arriving at Fiscal Estimate

Interlock Device

Under current law no one may remove, disconnect, tamper with or otherwise circumvent the operation of an ignition interlock device. The current first offense penalty is a fine between \$150 and \$600. Second and/or subsequent violations that occur within 5 years have a penalty of \$300 to \$1,000 and imprisonment of not more than six months in a county jail.

This bill imposes a penalty of up to six months in jail for first offense tampering or circumventing violations. This same penalty is also applicable to persons who fail to have an ignition interlock device installed as ordered by the court. The Department cannot predict the number of tampering or failure to install violations that will occur or what the sentencing practices of judges will be as a result of this legislation. The increased penalty allowing up to 6 months in jail for a first offense violation is anticipated to increase costs to local county jails.

Winnebago County Pilot

Under current law Winnebago County is authorized to run a pilot Operating While Intoxicated (OWI) program for 2nd and 3rd offense OWI violators. The pilot program allows reduction of the OWI imprisonment term if the offender successfully completes a period of probation that includes alcohol and other drug treatment.

This bill expands this sentencing option to any county that opts to allow a violator to successfully complete a period of probation that includes alcohol and other drug treatment in exchange for a shorter period of imprisonment.

Winnebago County reports CY 2008 savings of over \$275,000 in jail cost savings from shorter sentences that resulted in reduced jail bed days of 4,183 during this same time period. The Winnebago County pilot requires the offender to pay for the initial assessment and then any required treatment dependent on their ability to pay. If other counties require the same kind of payment system, there will be some treatment costs that are borne by the county. It is unclear if this would be an additional cost to the jail or some other department within the county.

The Department is not able to predict the number of counties that the Winnebago Pilot will be expanded to. If other counties experience the same results that are seen in Winnebago County local county jails could see reduced costs.

Injury by Intoxicated Use of a Motor Vehicle

Under current law a person who commits an OWI related offense and also causes injury (other than great bodily harm) to another is subject to a fine of not less than \$300 nor more than \$2,000, imprisonment of not less than 30 days nor more than one year, or both.

This bill increases the penalty to a class G felony with a bifurcated penalty structure of 10 years (5 years maximum confinement and 5 years maximum extended supervision) if the injury is related to a second or more OWI. In CY2006 the Department had 158 offenders admitted to probation and 6 inmates admitted to prison for Injury by Intoxicated Use of a Vehicle (not great bodily harm); it is unknown how many of these offenses were related to a second or more OWI. If, as a result of this legislation, more offenders are sentenced under the class G felony structure to a prison sentence, the Department will see increased costs.

Probation for 2nd and 3rd Offense OWI Convictions

Under current law a trial court may not place a person on probation if the person has committed a second or third violation related to operating a vehicle while intoxicated. This bill authorizes a court to place a person on probation for a maximum of one year.

Also under current law if a crime carries a mandatory minimum period of incarceration of one year or less, the person must be incarcerated for at least the mandatory minimum period as a condition of his or her probation. This bill makes this mandatory minimum incarceration requirement applicable to these convictions as well (5 days for a 2nd OWI conviction and 30 days for a 3rd).

Under current penalties, the Department of Corrections (DOC) may receive offenders when they obtain a 4th Offense OWI conviction (misdemeanor probation). During calendar year (CY) 2007 Department of Transportation (DOT) data shows that there were 1,902 convictions for 4th offense OWI. During this same calendar year period, DOC had 586 misdemeanor probation admissions for driving while intoxicated, approximately 30.81% of the total DOT convictions.

For purposes of this fiscal estimate, DOT's CY 2007 OWI conviction information is used to estimate additional staffing and funding that would be needed if convictions remained as they were in 2007 under the new penalty structures. In CY2007, there were 9,196 convictions for 2nd offense OWI and 4,114 convictions for 3rd offense OWI. If 30.81% of these convictions resulted in a one year probation term, the Department would see a permanent increase of 4,101 offenders on community supervision after the first full year of enactment of this legislation.

Community Corrections Staffing/Costs – If it is assumed that these OWI offenders will have similar supervision needs to other community corrections offenders, and the Department's Case Classification/Staff Deployment calculations are utilized to estimate additional staffing needs associated with these increased populations, the Department would need 104.50 additional FTE within the first year of enactment (73.00 FTE Probation and Parole Agents, 7.00 FTE Unit Supervisors and 24.50 FTE clerical support positions).

If FY08 average costs of a DCC probation/parole offender (\$6.68/day) are used to estimate additional funding needed to provide community supervision for this increased population, the Department would need approximately \$10 million on an annual ongoing basis once the full population increase of 4,101 is reached.

It is anticipated that purchase of services (assessment/treatment) funding for this type of offender would be much greater than the average DCC offender. Additional AODA treatment in the community could be needed in the following areas:

- ... Aftercare treatment - approx. \$24.47/offender (1x per month for 4 months)
- ... Outpatient treatment – approx. \$133.12/offender (1x per month for 3 months)
- ... Intensive outpatient treatment – approx. \$632.83/offender (4x per week for 3 months)
- ... Inpatient Treatment – approximately \$120/day/offender
- 90 day (3 mo) program totals \$10,800/offender
- 120 day (4 mo) program totals \$14,400/offender
- 180 day (6 mo) program totals \$21,800 per offender

Although it is assumed that 100% of the DCC OWI offenders will need some of the additional AODA treatment noted above, it is not possible to predict what percentage of these offenders will need each of these different types of AODA treatment options.

Electronic Monitoring – The Department would utilize electronic monitoring on an estimated 25% of the community OWI offenders for the first 6 months of supervision and place 100% of the community OWI offenders on sobriety and interlock devices for the term of their community supervision. Costs for electronic monitoring are \$0.92/day and \$1.09/day for sobriety. Interlock devices require a \$60.00 installation fee, \$70.00 monthly fee, \$60.00 one time security fee and a \$90.00/year charge for recalibration which is needed every 60 days. For purposes of this estimate all of the interlock costs are assumed to be paid by the Department.

Using the CY2007 DOT conviction numbers, equipment costs are projected to be \$2.2 million per year. An additional 56.00 FTE Monitoring Center staff would be needed at a cost of approximately \$3.1 million per year plus an initial \$550,700 in startup costs.

4th Offense OWI Convictions

Under current law, a 4th offense OWI conviction is a misdemeanor punishable by a \$600 to \$2,000 fine and 60 days to one year imprisonment. Sentencing courts can also place a 4th offense OWI offender on probation for up to two years. Under this bill 4th offense OWI is limited to a probation term of up to one year.

In CY2007 DOC had 586 admissions to probation for misdemeanor Driving While Intoxicated. If you assume that all of these individuals received a probation term of two years, by the end of the second year they would represent an average daily population (ADP) on probation of 1,172 offenders. The reduction in probation

term to a maximum of one year would reduce the ADP to 586 resulting in annual cost savings in the Department's Community Corrections costs of approximately \$1.4 million.

Under this bill if the 4th offense OWI occurs within 5 years of a previous OWI conviction, the offender is convicted of a class H felony. If the offender is sentenced to prison under a bifurcated sentence, he/she must serve a minimum of two years to a maximum of 3 years in prison and 3 years on extended supervision. It is not known how many 4th offense OWI probation admissions occurred within 5 years of a prior OWI conviction. In FY08 the annual cost to supervise an offender on community supervision was \$2,440, while the cost to incarcerate an inmate in DOC's institutions was approximately \$30,700 per year.

5th Offense and Greater OWI Convictions

This proposed legislation does not change the felony class for any OWI offenses for 5th offense or greater OWI convictions. The legislation, does, however set new minimum confinement periods if the sentencing court uses a bifurcated sentencing structure at the time of sentencing. New minimum confinement periods range from two years for 5th and 6th offense, three years for 7th through 9th offense and four years for 10 or more OWI offenses. It is unknown how many offenders will be convicted for each of these offenses in the future or how the new minimum sentence requirements will affect sentences utilized by the courts.

During CY 2007 the Department released 667 offenders to extended supervision who had been convicted of Driving While Intoxicated. The cost for one of these offenders to spend one more year in prison rather than being released to ES is approximately \$28,300 (\$30,700 per year to incarcerate an offender rather than \$2,440 per year to supervise them on community supervision).

SUMMARY:

New jail penalties related to tampering or failing to install interlock devices are anticipated to increase local jail costs, while expansion of the Winnebago Pilot to other counties and making some Injury by Intoxicated Use of a Vehicle convictions punishable as a felony have the potential to reduce local jail costs.

It is anticipated that increasing some Injury by Intoxicated Use of a Vehicle convictions to a class G felony, placing 2nd and 3rd offense OWI offenders on probation, increasing 4th offense OWI convictions that occur within 5 years to class H felonies and imposing minimum confinement periods on bifurcated sentence structures for felony OWI convictions will result in cost increases to the Department of Corrections.

The precise cost impact of this legislation will ultimately depend on the sentencing practices of judges under the new penalty structures and the number of offenders who violate these specific offenses, making it impossible to provide a specific fiscal impact.

Long-Range Fiscal Implications

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Agency/Prepared By		Authorized Signature	Date
DOJ/ Mark Rinehart (608) 264-9463		Mark Rinehart (608) 264-9463	6/1/2009

Fiscal Estimate Narratives

DOJ 6/1/2009

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Assumptions Used in Arriving at Fiscal Estimate

2009 Assembly Bill 283 makes several changes to existing law relating to drunk driving. The following changes will have an impact on the Department of Justice:

1) Imposing Surcharges for 1st Offense OWI with .08-.099 BAC

Under current law, a person who commits their first OWI offense with a blood alcohol concentration between .08 and .099 is subject only to a forfeiture of not less than \$150 nor more than \$300. AB 283 subjects a person who commits their first OWI offense with a blood alcohol concentration between .08 and .99 to the several surcharges and fees paid by other OWI offenders, including the crime laboratories and drug law enforcement surcharge, and the penalty surcharge.

The crime laboratories and drug law enforcement surcharge is \$8 and is used to support the DNA databank, DNA evidence prosecution efforts, the crime laboratories, and drug law enforcement efforts. The penalty surcharge is generally assessed when a court imposes a fine or forfeiture for a violation of state law or local ordinance. The penalty surcharge is 26% of the fine or forfeiture. Penalty surcharge revenues are allocated to appropriations in a number of state agencies, including DOJ, to support specific programs. Approximately 65% of penalty surcharge dollars are allocated to DOJ programs.

According to DOT, in 2007, there were 950 cases of driver license revocations for 1st offense OWI with a BAC between .08 and .099. As a result, in 2007, \$7,600 (950 x \$8) in additional crime laboratories and drug law enforcement surcharge dollars could have been generated under AB 283. Also, a minimum of \$37,050 (950 x \$150 x 26%) in additional penalty surcharge dollars could have been generated and DOJ could have received an additional \$24,082 (\$37,050 x 65%) of penalty surcharge dollars for department programs in 2007 under AB 283.

2) Making 4th Offense OWI a felony and making second or subsequent OWI-related offense resulting in injury to another person a felony.

Under AB 283, the penalty for a person who commits a fourth OWI-related offense within five years of a prior offense, and for a person who commits a second or subsequent OWI-related offense resulting in injury to another person, is increased to a felony.

According to DOT, in 2007, there were 276 convictions for fourth OWI offense within five years of a prior offense. DOT also reports that there were 119 convictions for second OWI offense causing injury and 46 convictions for third OWI offense causing injury in 2007.

While most felony prosecutions are handled by district attorneys, assistant attorneys general in the Department of Justice's Criminal Litigation Unit on occasion act as special prosecutors throughout Wisconsin at the request of district attorneys. In addition, the Department of Justice's Criminal Appeals Unit represents the State of Wisconsin in defending felony convictions when those convictions are challenged in state or federal court. Under Wisconsin law, this unit is charged with preparing briefs and presenting arguments in front of any state appellate or federal court hearing a challenge to a felony conviction.

Since AB 283 broadens the types of activities that can be prosecuted as felonies, enactment of the bill will result in an increased caseload for DOJ, particularly the Criminal Appeals Unit.

DOJ estimates that approximately one-third to one-half of the OWI-related convictions covered by AB 283 will end up being appealed. As a result, based on 2007 figures, DOJ's Criminal Appeals Unit caseload will increase by approximately 145-220 cases under AB 283. DOJ will need three Assistant Attorneys General to handle this increased caseload. Total salary, fringe, supplies, and equipment costs for three Assistant

Attorneys General is \$461,700 for the first year and \$436,800 for the second and subsequent years.

It should be noted, DOJ's crime lab currently performs the analysis of blood samples submitted by local law enforcement agencies relating to felony OWI violations. DOJ is currently able to process incoming blood samples within 2 days. If DOJ receives an additional 450 samples annually, it make take approximately 6-7 days to process incoming blood samples.

Long-Range Fiscal Implications

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Agency/Prepared By DOT/ Richard Kleist (608) 266-1449	Authorized Signature Julie Johnson (608) 267-3703
Date 6/2/2009	

Fiscal Estimate Narratives

DOT 6/2/2009

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Assumptions Used in Arriving at Fiscal Estimate

BILL SUMMARY

Ignition Interlock Device (IID), Immobilization, and Seizure Requirements

Under current law, if a person is convicted of a second offense of operating a motor vehicle with a prohibited alcohol concentration or under the influence of an intoxicant (OWI-related offense), a judge may immobilize the person's motor vehicles or require that the person's operating privilege be limited to operating vehicles equipped with an IID. If a person is convicted of a third or subsequent (OWI-related offense) within five years, a judge must limit the person to operating only vehicles equipped with an IID or order that the person's motor vehicles be immobilized or seized and sold at auction.

Current law requires the person to pay the cost of installing and monitoring the IID on every vehicle the person owns. If the judge determines this would cause a hardship on the person, the judge may require the IID be installed on some, but not all, of the person's vehicles.

This proposal makes it mandatory for the judge to order a person's operating privilege be restricted, for a minimum of one year, to operating only vehicles equipped with an IID if the person is convicted of a first OWI-related offense with a blood alcohol concentration of 0.15 or more or the person is convicted of a second OWI-related offense or if the person's operating privilege is revoked for any refusal to submit to a test for intoxication.

The bill requires the judge to order that every motor vehicle the person owns be equipped with an IID. The person is required to pay to the court a \$50 interlock surcharge of which the county shall retain \$40 of each surcharge and make payment of the remaining \$10 to the department. If the judge determines the person's income is at or below 150 percent of the nonfarm federal poverty line, they are required to pay only one-half of the IID installation cost and one-half the cost per day per vehicle toward maintaining the device. Persons whose income is above the stated poverty line are required to pay the full cost associated with the IID order. No occupational license can be issued to the person until the surcharge is paid and the ordered IID(s) are installed.

The bill subjects a person who fails to have an IID installed to the same penalties as a person who removes, disconnects, tampers with, or otherwise circumvents the operation of the IID and adds a provision for imprisonment for not more than six months and extends the period for which the IID is required by six months for each offense.

This proposal eliminates the court's option of ordering the person's vehicle to be immobilized or seized and sold at auction.

.02 Prohibited Alcohol Concentration

Current law defines a "prohibited alcohol concentration" as an alcohol concentration of 0.08 or more if the person has two or fewer prior OWI-related convictions, suspensions, or revocations. If the person has three or more prior OWI-related convictions, suspensions, or revocations, the prohibited alcohol concentration is defined as an alcohol concentration of more than 0.02.

This bill adds a definition of a prohibited alcohol concentration as an alcohol concentration of more than 0.02 if the person was ordered to have an IID installed or if the person has committed any OWI offense within the preceding two-year period.

.08 - .099 Loophole

Current law provides a person who commits their first OW offense and has a blood alcohol concentration between 0.08 and 0.099 at the time of the offense does not have to pay the penalty surcharges or court fees and does not have to complete an alcohol or other drug assessment program. Additionally, DOT must purge its records of a first offense OWI in this category after 10 years. All other records of OWI offenses are kept permanently.

This bill makes a person committing their first OWI offense and has a blood alcohol concentration between 0.08 and 0.099 liable for the surcharges or fees and they must complete an alcohol or other drug assessment program before their driver license can be reinstated. The bill also requires DOT to keep record of this offense permanently.

Tolling Revocation Period During Incarceration

Current law requires the time period used to count the number of OWI-related offenses be measured from the date of the refusal to submit to a prohibited alcohol concentration test or the date of the OWI-related violation that resulted in revocations or convictions.

This proposal requires the time period specified for counting the number of refusal or OWI-related offenses ("count-back" period) be tolled or should not include any period of time whenever or for as long as the person is imprisoned. The proposal also requires the person whose refusal or OWI-related violation-counting period is tolled to notify DOT they have been released from prison so the correct "count-back" period can be applied.

ASSUMPTIONS

Ignition Interlock Device (IID), Immobilization, and Seizure Requirements

This proposal would increase DMV workload for data entry of IID restrictions for all first offense OWI-related convictions with a blood alcohol concentration of 0.15 or more and all second and subsequent OWI-related offenses or if the person's operating privilege is revoked for any refusal to submit to a test for intoxication.

As the proposal requires a person ordered to have an IID installed to pay the interlock surcharge before any occupational license can be issued, the court ordering the installation will need to inform DOT if or when the surcharge has been paid.

The proposal would also require a recalculation of restriction ending dates and reissuing of driver licenses with IID restrictions extending that restriction date according to a court's order for persons convicted of tampering with a device.

This proposal would eliminate the need to add notations to driver's registration records relating to the immobilization or seizure of their vehicles.

As a condition of obtaining an occupational license, this proposal requires a person to provide proof of installation of an IID for each vehicle titled or registered in their name. It is possible many people may transfer titles to other persons to avoid the need to install IIDs in each vehicle titled or registered in their name.

.02 Prohibited Alcohol Concentration

This proposal would increase DMV workload for creating OWI-related revocations, issuance of occupational licenses and license reinstatements due to the increase in convictions as a result of the lower blood alcohol concentration levels.

.08 - .099 Loophole

Those persons convicted of operating a motor vehicle with a blood alcohol concentration between 0.08 and 0.099 would be required to complete an alcohol assessment, as is currently required of a person convicted of operating with a blood alcohol concentration of 0.10 or greater. As this proposal would require more drivers to submit to alcohol assessments, it would also increase the number of revocations of operating privileges DMV must generate for failure to complete the alcohol assessment.

Purge criteria for removal from department records of convictions for first offense OWI with a blood alcohol concentration between 0.08 and 0.099 must be changed, as this proposal would now require those

convictions to be stored on the record permanently.

Tolling Revocation Period During Incarceration

The proposal as written would result in little impact on DOT processes. Computer programming changes would be needed to add an area for the court to report ordered imprisonment upon the person's conviction. Programming of these changes could potentially delay programming of Commercial Driver License (CDL) system changes necessary for CDL compliance issues required by the federal government.

CONCLUSION

Ignition Interlock Device (IID), Immobilization, and Seizure Requirements:

In 2007, there were about 23,500 revocations for first offense OWI-related convictions (OWI, OII, PAC, GBH, NHI). Assuming 60 % of those convictions resulted from a person operating with a blood alcohol concentration of 0.15 or more, 17,363 offenders would be subject to an IID restriction under this proposal. In 2007, there were approximately 19,292 revocations for refusal to submit to a test for intoxication and second and subsequent OWI-related convictions (OWI, OII, PAC, NHI, GBH) each requiring an IID restriction under this proposal. This proposal would result in about an additional 32,450 IID restrictions. This increase would be minimally offset by a reduction in the number of notations added to driver's registration records relating to the immobilization or seizure of their vehicles.

The fiscal impact of data entry of these restrictions is .31 FTE (1 minute per transaction) or approximately \$11,600.

(0.31 TCR Senior = \$11,600 salary and fringe annually)

The fiscal impact of extending a restriction ending date and reissuing a driver license due to a conviction for tampering with an IID assuming 3% of all drivers requiring the device (32,450) violated would be .1 FTE (10 minutes per transaction) or approximately \$4,400. (0.1 TCR Advanced = \$4,400 salary and fringe annually)

The fiscal impact of possible title transfers to avoid the need to install IIDs in each vehicle titled or registered in the person's name is indeterminate. The number of these transfers is impossible to determine, therefore the cost of the FTE necessary for handling the transfers and the revenue generated by fees paid for the transaction cannot be determined.

Revenue received by the Department from the \$10 interlock surcharge would total \$366,550, assuming all persons required to install an IID paid the surcharge. Monies collected from this surcharge are to be appropriated to the Motor Vehicle Services Fund newly created in this proposal for "Ignition interlock device administration and enforcement".

.02 Prohibited Alcohol Concentration:

In 2007, 45,366 persons were convicted of offenses under s. 343.307 (1), which would make them eligible for the 0.02 prohibited alcohol concentration requirement. Assuming 15% of those persons violated the .02 requirements, an additional 6,800 new operating privilege withdrawals would result. The fiscal impact of these new withdrawals would be an additional 2.3 FTE or \$116,200 and \$5,426 for supplies with approximately \$328,060 in additional revenue from reinstatement and occupational license fees.

.08 - .099 Loophole:

In 2007, there were approximately 950 revocations for operating a motor vehicle with a blood alcohol concentration between 0.08 and 0.099 who would under this proposal now be required to complete an alcohol assessment. Assuming 40% of these people did not complete the required assessment (a percentage equal to first offense OWI convictions in 2007) and their operating privilege was subsequently revoked, an additional 380 revocations would be generated by DMV. Of these 380 revocations, approximately 50%, or 190 would be created manually. Additionally, an expected 50%, or 190 of the people revoked would regain compliance and subsequently reinstate their operating privilege.

The fiscal impact of generating these revocations is .04 FTE or \$1800 and \$500 for supplies and services. (0.04 TCR Advanced = \$1,800 salary and fringe annually)

One-time cost of approximately \$300 for updating driver license computer systems changing driver record purge criteria and to allow pending flags to be set requiring alcohol assessments to be completed for persons with blood alcohol concentrations of 0.08 through 0.099.

The expected revenue generated by reinstatements of an expected 50% of these additional revocations is \$11,400.

Tolling Revocation Period During Incarceration:

As the proposal is written, there should be no FTE or supply cost changes. The cost for computer programming changes needed to add an area for the court to report ordered imprisonment upon the person's conviction would be approximately \$57,240.

The fiscal impact on local government is an expected \$1,466,200 increase in revenues due to the \$40 received from the new interlock surcharge created for each person subject to an IID order made by the court and the expected increase in number of IIDs required.

Long-Range Fiscal Implications

See above

Fiscal Estimate Worksheet - 2009 Session

Detailed Estimate of Annual Fiscal Effect

☒ Original
 ☐ Updated
 ☐ Corrected
 ☐ Supplemental

LRB Number 09-2859/1		Introduction Number AB-0283	
Description Operating a vehicle while intoxicated, granting rule-making authority, making an appropriation, and providing a penalty			
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect): The expected costs for computer programming changes necessary to recalculate restriction date changes, update purge criteria, make adjustments to cause alcohol assessments to be required, and changes needed to allow tolling of revocation periods are estimated to be approximately \$96,240.			
II. Annualized Costs:		Annualized Fiscal Impact on funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes	\$134,000	\$	
(FTE Position Changes)	(2.8 FTE)		
State Operations - Other Costs	5,900		
Local Assistance			
Aids to Individuals or Organizations			
TOTAL State Costs by Category	\$139,900	\$	
B. State Costs by Source of Funds			
GPR			
FED			
PRO/PRS			
SEG/SEG-S (s.20.395 (5) (cq))	139,900		
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
	Increased Rev	Decreased Rev	
GPR Taxes	\$	\$	
GPR Earned			
FED			
PRO/PRS (s.20.395)	366,550		
SEG/SEG-S (s.20.395)	339,460		
TOTAL State Revenues	\$706,010	\$	
NET ANNUALIZED FISCAL IMPACT			
	State	Local	
NET CHANGE IN COSTS	\$139,900	\$	
NET CHANGE IN REVENUE	\$706,010	\$1,466,200	
Agency/Prepared By	Authorized Signature	Date	
DOT/ Richard Kleist (608) 266-1449	Julie Johnson (608) 267-3703	6/2/2009	

Fiscal Estimate - 2009 Session

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental

LRB Number 09-2859/1		Introduction Number AB-0283	
Description Operating a vehicle while intoxicated, granting rule-making authority, making an appropriation, and providing a penalty			
Fiscal Effect			
State:			
<input type="checkbox"/> No State Fiscal Effect			
<input type="checkbox"/> Indeterminate			
<input type="checkbox"/> Increase Existing Appropriations		<input type="checkbox"/> Increase Existing Revenues	
<input type="checkbox"/> Decrease Existing Appropriations		<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriations		<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget	
		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<input type="checkbox"/> Decrease Costs	
Local:			
<input type="checkbox"/> No Local Government Costs			
<input type="checkbox"/> Indeterminate			
1. <input checked="" type="checkbox"/> Increase Costs		3. <input type="checkbox"/> Increase Revenue	
<input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory		<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs		4. <input type="checkbox"/> Decrease Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
5. Types of Local Government Units Affected			
<input type="checkbox"/> Towns		<input type="checkbox"/> Village	
<input checked="" type="checkbox"/> Counties		<input type="checkbox"/> Others	
<input type="checkbox"/> School Districts		<input type="checkbox"/> WTCS Districts	
Fund Sources Affected		Affected Ch. 20 Appropriations	
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS			
Agency/Prepared By		Authorized Signature	
SPD/ Mike Tobin (608) 266-8259		Krista Ginger (608) 264-8572	
		Date	
		5/29/2009	

Fiscal Estimate Narratives

SPD 5/29/2009

LRB Number	09-2859/1	Introduction Number	AB-0283	Estimate Type	Original
Description					
Operating a vehicle while intoxicated, granting rule-making authority, making an appropriation, and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

The State Public Defender (SPD) is statutorily authorized and required to appoint attorneys to represent indigent defendants in criminal proceedings. The SPD plays a major role in ensuring that the Wisconsin justice system complies with the right to counsel provided by both the state and federal constitutions. Any legislation has the potential to increase SPD costs if it creates a new criminal offense, expands the definition of an existing criminal offense, or increases the penalties for an existing offense.

This bill would increase the workload and associated costs for the SPD in five respects, as follows:

- „X Increased number of cases of operating after revocation
- „X Change in classification of some OWI cases from misdemeanor to felony
- „X Increased litigation in OWI cases because of increased penalty
- „X New crimes and expanded definitions of crimes
- „X Increased number of cases for proceedings to revoke probation or extended supervision

1. The bill would indirectly result in an increased number of criminal proceedings for the charge of operating a vehicle after revocation (OAR). Several provisions in the bill add to the length of time during which persons are unable to reinstate their driving privileges or establish conditions that some persons will not satisfy as prerequisites for reinstatement. These provisions include the following:

The bill would make it mandatory for the court to require that certain persons are limited to operating vehicles equipped with ignition interlock devices. The bill would also require a person subject to such an order to pay all or part of the costs of installing an interlock device on all vehicles that the person owns. These requirements would result in some persons being unable or unwilling to comply with the requirements and incurring subsequent criminal charges for operating after revocation of driving privileges.

The bill would extend the length of revocations of driving privileges for the period of time that a person is incarcerated and would place the burden on the person to notify the Department of Transportation (DOT) when he or she is released. Therefore, it appears that the revocation period would be extended at least for the time while the person is incarcerated and, if the person fails to notify DOT of his or her release, the revocation period would be extended indefinitely.

The bill would eliminate a distinction that presently exists in cases of operating under the influence of intoxicants (OWI), first offense, according to the driver's blood alcohol concentration (BAC). The bill would require all defendants convicted of OWI, first offense, to pay surcharges and fees not required under current law when the BAC is less than 0.1. The bill would also require an alcohol or other-drug assessment in all cases before the defendant is eligible to reinstate driving privileges. These changes would also result in longer periods of revoked driving privileges for some persons, which indirectly would lead to additional charges of OAR.

The SPD has no data to predict the number of additional cases of operating after revocation that would result from the changes proposed in this bill. In fiscal year 2008, the SPD's average cost per misdemeanor case was \$217.54.

2. The bill would also increase the maximum penalties for certain OWI offenses. Some fourth-offense OWI cases would be classified as felonies under this bill (under current law, these offenses are misdemeanors, and OWI fifth-offense and subsequent OWIs are felonies). Also, charges of OWI causing injury would be classified as felonies if the driver had a previous OWI conviction (these charges are misdemeanors under current law). In fiscal year 2008, the SPD's average cost per felony was \$544.58, compared to an average cost per misdemeanor of \$217.54. Because the SPD tracking of misdemeanor cases does not presently differentiate between those charges that would be felonies under this bill and those that would remain

misdemeanors, the SPD cannot predict with precision the number of cases affected. The SPD provided representation in 5,057 misdemeanor OWI cases in fiscal year 2008.

3. The proposed increased penalties in many OWI cases could also result in additional trials and contested sentencing hearings. These effects are likely not only in the cases described in point 2., above, but also in OWI cases that are already classified as felonies under current law, but would carry higher mandatory penalties under the bill. These proceedings require additional attorney time and therefore increase SPD costs. The increased penalties (felony record and/or increased incarceration, depending on the specific allegations) make it likely that more defendants will choose to proceed to trial, rather than to plead guilty and accept the more-severe consequences of a conviction. Also, in the felony cases, there are likely to be additional challenges to the validity of the previous convictions that serve as the basis for the felony classification. The SPD cannot predict the number of increased trials or contested sentencing hearings; however, we could track the number of trials before and after the implementation of the bill to estimate its effect.

4. The bill would create a new misdemeanor offense for circumventing the proper operation of an ignition interlock device. The bill would also expand the class of persons who are subject to the BAC of .02, instead of .08, which would indirectly lead to additional misdemeanor OWI cases.

The SPD has no data to predict the number of additional misdemeanor cases that would result from the new crime and expanded crime proposed in this bill. In fiscal year 2008, the SPD's average cost per misdemeanor case was \$217.54.

5. The bill would authorize courts to place defendants on probation following conviction for OWI, 2nd or 3rd offense. This change would indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation. The SPD provides representation in proceedings commenced by the Department of Corrections (DOC) to revoke supervision (the forms of supervision are probation, parole, and extended supervision). The bill would also lead to additional cases in which DOC would supervise persons on extended supervision, which is a required second part of a bifurcated prison sentence (the bill's mandatory prison sentences in all felony OWI cases would result in this increase). Thus, the bill would indirectly increase the number of cases in which the SPD appoints attorneys in revocation proceedings. The SPD does not have the data to determine how many additional persons would be placed on DOC supervision (probation or extended supervision) or the number of additional revocation proceedings that would occur. The average cost during fiscal year 2008 for SPD representation in a revocation proceeding was \$368.86.

Counties are also subject to increased costs when a new crime is created. There are some defendants who, despite exceeding the SPD's statutory financial guidelines, are constitutionally eligible for appointment of counsel because it would be a substantial hardship for them to retain an attorney. The court is required to appoint counsel at county expense for these defendants. Thus, the counties will incur increased costs because of the increased number of criminal cases and the increased number of felony cases in which defendants will have a constitutional right to counsel, but will exceed the SPD statutory criteria. The counties could also incur additional costs associated with incarceration of defendants, both pending trial and after sentencing in OWI cases and after a finding of contempt for persons who fail to pay the court-ordered costs. Also, the possibility of additional contested sentencing hearings could add to county costs in cases in which the court appoints the defense attorney.

The counties will incur additional costs associated with longer incarceration of defendants, both pending trial and after sentencing. Depending on the number of felony cases resulting in prison sentences instead of jail sentences, some of the increased incarceration costs could be incurred by the Department of Corrections instead of by counties.

The constitutional right to counsel applies to revocation proceedings in which the legal issues are too complex for the person facing revocation to address without legal assistance. Thus, the counties will also incur increased costs because of the increased number of revocation proceedings in which defendants have a constitutional right to counsel, but will exceed the SPD statutory criteria. The counties could also incur additional costs associated with incarceration of defendants, both pending revocation proceedings and after revocation of probation.

Long-Range Fiscal Implications